

II. Rejection under 35 U.S.C. § 102(a)

Claims 1, 3, 5, 12-17, 19-20, 40, and 42-47 were rejected by the Examiner as anticipated under 35 U.S.C. §102(a) by PCT Publication Nos. WO 99/44956, WO 99/44958, WO 99/44959, WO 00/21899, and WO 00/21900 (collectively, "the publications") respectively. Applicants traverse this rejection for at least the following reason.

"The Publications" Are Not Valid Prior Art Under 35 U.S.C. § 102(a)

35 U.S.C. §102(a) states, *inter alia*:

"A person shall be entitled to a patent unless: (a) the invention was...described in a printed publication in this or a foreign country, *before* the invention thereof by the applicant for patent..." (emphasis added)

With the above in mind, Applicants note that "the publications" relied on by the Examiner to reject claims 1, 3, 5, 12-17, 19-20, 40, and 42-47 under 35 U.S.C. 102(a) claim priority as follows:

- **WO 99/44956:** This document claims priority to U.S. Patent Application Nos. 09/034,056 and 09/170,565;
- **WO 99/44958:** This document claims priority to U.S. Patent Application Nos. 09/034,078 and 09/170,579;
- **WO 99/44959:** This document claims priority to U.S. Patent Application Nos. 09/034,525, 09/130,270, and 09/170,578;
- **WO 00/21899:** This document claims priority to U.S. Patent Application No. 09/170,566, as well as U.S. Provisional Application Nos. 60/133,076 and 60/146,337; and

- **WO 00/21900:** This document claims priority to U.S. Patent Application No. 09/170,578, as well as U.S. Provisional Application Nos. 60/133,075, 60/133,076 and 60/146,337.

Applicants respectfully direct the Examiners attention to Applicants claim of priority, which is presented in the declaration of the present Application. As the Examiner will notice, each of "the publications" relied on in the Office Action claim priority to one or more of the documents to which the present Application claims priority. Thus, Applicants respectfully submit that each of the cited "publications" is not valid prior art, because these publications do not satisfy the "before" requirement of 35 U.S.C. § 102(a). In other words, because "the publications" relied on by the Examiner claim priority to one or more of the same documents as the present application, they could not have been published before the invention of the subject matter disclosed and claimed in the present Application.

Accordingly, Applicants submit that the rejection of claims 1, 3, 5, 12-17, 19-20, 40, and 42-47 under 35 U.S.C. 102(a) as anticipated by "the publications" is in error, and its withdrawal is respectfully requested.

III. Rejection under 35 U.S.C. §103(a)

Claims 1, 3, 5, 12-20, 40, and 42-47 were rejected under 35 U.S.C. § 103(a) as unpatentable over Nagamine in view of Russian Patent Publication No. 2072121 ("Adolfovna"), and further in view of WO 99/44956, for the reasons set forth at page 3 of the Office Action. Applicants respectfully traverse this rejection for at least the following reasons.

As evidenced above, WO 99/44956 is not valid prior art with respect to the present Application under either 35 U.S.C. §102 or §103. Therefore, the Examiner's rejection of claims 1, 3, 5, 12-20, 40, and 42-47 is not tenable, as it is predicated on a publication that does not qualify as prior art for the purposes of rejection under 35 U.S.C. §103(a). Therefore the rejection of claims 1, 3, ,5, 12-12, 40, and 42-47 should be withdrawn for this reason alone.

Further, the Examiners rejection utilizes WO 99/44956 as the basis for upholding the prior rejection of claims 1, 3, 5, 12-20, 40, and 42-47 as unpatentable under 35 U.S.C. §103(a) over Nagamine in view of Adolfovna. As WO 99/44956 has been demonstrated to be inapplicable to the present application, the basis for the Examiners rejection is reduced to the prior asserted combination of Nagamine with Adolfovna alone. As no other basis aside from that provided in WO 99/44956 has been asserted by the Examiner for upholding the combination of Nagamine with Adolfovna, Applicants respectfully reiterate and request reconsideration of the arguments made against this combination that were submitted with the response dated March 03, 2005.

In view of these arguments, Applicants once again submit that the Examiner has failed to establish a prima facie case of obviousness with respect to the pending claims, and respectfully request that the rejection of claims 1, 3, 5, 12-20, 40, and 42-47 under 35 U.S.C. §103(a) be withdrawn.

IV. Conclusion

In view of the foregoing remarks, Applicants respectfully submit that the present application is not anticipated by or rendered obvious in view of the references cited

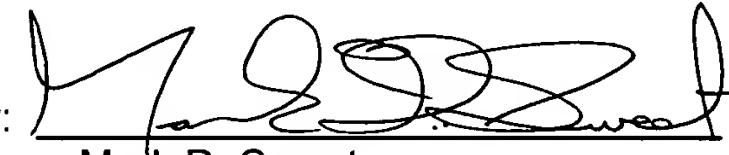
against it. Applicants respectfully request the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 25, 2005

By: 
Mark D. Sweet
Reg. No. 41,469